

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

08/23/04 P. 3 v.1
CIVIL ACTION NO.

04-10040-REK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

INTAC INTERNATIONAL, INC.)
Plaintiff)
)
v.)
)
A CORP d/b/a ROOTERMAN and)
DONALD MACDONALD,)
Defendants)
)

AFFIDAVIT OF ATTORNEY WILLIAM H. MCCARTER, JR.

I, William H. McCarter, Jr., based upon my own personal knowledge, depose and say:

1. I am the Attorney of Record for the Defendants in this action.
2. I was directly responsible for the preparation of the Answer and Counterclaim of Defendant A Corp d/b/a Rooterman, the final draft of which was completed on March 19, 2004.
3. In the evening of March 19, 2004, I fell in my residence and broke my hip, was taken by ambulance to the hospital and was operated on the following day requiring three pins to be inserted in my hip.
4. After the operation, I was taken to Spaulding Rehabilitation Hospital for rehabilitation and therapy where I remained until discharge on April 12, 2004.
5. On March 22, 2004, Donald MacDonald and my assistant attorney on this case, Jenny Liu, brought to my hospital room the final copies of the Answer and Counterclaim of Defendant A Corp d/b/a Rooterman and the Motion to Dismiss Donald MacDonald and related Memorandum which I signed for filing in Court and service on Plaintiff.
6. I returned to my home on April 12, 2004, but was unable to drive until July 14, 2004.

Consequently, I was unable to get to my clients' office in North Billerica unless a friend drove me, and this occurred only three times prior to July 14, 2004.

7. After April 12, 2004, I did meet with my assistant attorney at my residence on two or three occasions and was in close communication with her in preparation of Defendants' motion for summary judgment. I also communicated frequently with Plaintiff's counsel to prepare a joint statement for the scheduling conference on June 10, 2004.

8. At the scheduling conference on June 10, 2004, the Court denied Defendant's motion to dismiss Donald MacDonald as a Defendant.

9. I had not reviewed the Answer of A Corp d/b/a Rooterman for almost three months and, since the proposed Answer for Donald MacDonald is exactly identical to the Answer of A Corp, I quite frankly forgot that a separate answer needed to be filed for Donald MacDonald.

10. The proposed Answer of Donald MacDonald, filed herewith with the Motion to Permit Late Filing of Answer, is in fact identical in substance to the Answer of Defendant A Corp d/b/a Rooterman, except that no counterclaim is filed by Donald MacDonald.

11. Plaintiff is not prejudiced by the late filing and has given its assent thereto.

THE FOREGOING STATEMENTS ARE MADE UNDER THE PAINS AND
PENALTIES OF PERJURY THIS 20TH DAY OF AUGUST, 2004.



William H. McCarter, Jr.

CERTIFICATE OF SERVICE

I certify that a true copy of the above document was served by mail upon the attorney of record for Plaintiff on the date set forth below.

Date: August 20, 2004

William H. McCarter, Jr.
William H. McCarter, Jr.